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Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: The Honorable Joseph Stirmer

RE: Calvary Educational Broadcasting Network, Inc., MM Docket
No. 92-122, Poplar Bluff, Missouri

Dear Ms. Searcy:

Transmitted herewith on Behalf of Calvary Educational Broadcasting Network, Inc. is an original and six copies of a corrected version of its "Conclusions of Law" which were filed with the Commission on February 10, 1993.

The corrections consist of inserting paragraph citations in the "Conclusions" portion which refer to paragraphs in the "Findings" portion. Other than inserting the missing paragraph citations there have been no other changes to Calvary's February 10 submission.

Counsel regrets any inconvenience caused the Presiding Officer or Mass Media Bureau counsel by the missing paragraph citations.

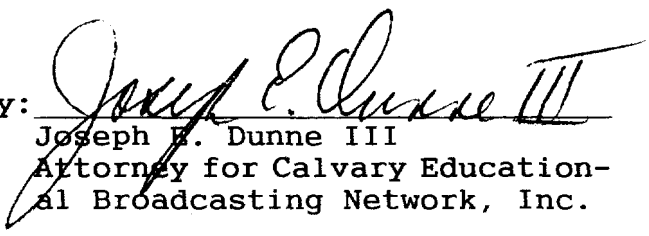
Should any questions arise concerning this matter, kindly contact the undersigned directly.

Respectfully submitted,

MAY & DUNNE, CHARTERED

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By:


Joseph E. Dunne III
Attorney for Calvary Education-
al Broadcasting Network, Inc.

JED:gmcA64
enclosures

xc: All Per Attached Certificate of Service
Nina Stewart

(MMB Ex. 1, p. 49). Reception on the television set on which KOKS filters were installed showed that there was no difference in reception with KOKS on or off the air. Ramage noted that Mrs. Christian had installed a booster after her complaint was filed (MMB Ex. 1, p. 49). However, Mrs. Stewart testified that Mrs. Christian called very soon after the station went on the air and had a booster and a preamplifier then (Ex. 3, p. 24; also Ex. 17, p. 32). At the Garrison home Ramage noted that his picture improved on channel 6 when KOKS was off the air, but all other channels were unaffected by KOKS transmissions (MMB Ex. 1, p. 51). Mr. Garrison was also unaware of a filter that was installed on his TV set. Mr. Crutchfield had a booster installed on his system running all his TV sets (MMB Ex. 1, p. 53).

III. CONCLUSIONS OF LAW³/

A. The Ineptness Issue⁴/

77. The HDO grounds the designation of the "Ineptness Issue" on the following factual predicates based on Mr. Ramage's field report:

³/Factual statements will be supported by citations to the paragraph in the findings where the assertion is supported by the record using the form "fdgs. ¶ ____." As with the findings, to limit the number of redundant citations to the record a citation will be made at the end of a sentence only when the source for the material is different from that specified in the previous citation.

⁴/For ease of reference, Calvary will here refer to designated issue number 3, "[t]o determine whether the licensee's management and operation of the station KOKS was so negligent, careless, or inept ..." as "the Ineptness Issue."

(i) a discrepancy of some 30% exists regarding the exact power which the station is operating, which discrepancy is unknown to the station management; (ii) the station has been operating since October with a new directional antenna without the required Commission authorization; (iii) the station's tower is not lit in accordance with its construction permit; and (iv) the station's public file fails to contain the required community issues/programs list and list of donors supporting station programming (HDO, ¶ 16).

With respect to points (ii) and (iii), the Mass Media Bureau has stipulated that Calvary's change from a four-bay to a seven-bay antenna was consistent with sections 73.1690(b) and (c) of the Commission's rules and that the placement of Calvary's lights on the tower "... does not constitute a violation of the Commission's Rules and does not evidence ineptness in the operation of KOKS (fdgs. ¶ 64).

78. With respect to the purported discrepancy in the amount of power with which the station is operating, Mr. Ramage testified that while he was at the station the station's engineer, Mr. Lampe, called the transmitter manufacturer who confirmed that the problem was not one of a power discrepancy but a problem with "current metering" (fdgs. ¶ 63). Both Mr. Ramage and Mr. Lampe testified that there were a number of meter readings on the transmitter, including both the plate current meter reading and a meter showing the percentage of transmitter power output. One meter, the plate current reading, was low. The other meter showed that the station was operating at all relevant times within legal limits. Mr. Lampe testified that he checked the meter showing the percentage of transmitter power output every month and the transmitter always

operated within legal limits (fdgs. ¶ 62). The problem was simple-- a gauge that was damaged by a lightning strike which produced a low plate current meter reading. There was no discrepancy in the amount of power produced by the transmitter. The transmitter manual, which Mr. Lampe testified he showed Mr. Ramage, warned that the plate current meter reading might be low if there was damage to the antenna. When the meter was repaired the readings for plate current returned to normal. Calvary submitted an explanation to the FCC alluding to the fact that the plate current meter was damaged and attaching the page from the transmitter manual showing that damage to the system would result in a low reading which Mr. Ramage described as "satisfactory."

79. The record evidence is contradictory concerning whether Calvary had a programs/problems list in its public file or a list of donors supporting its programming. Mr. Ramage's report and his testimony both state that he requested the programs/problems list from the public file and the lists were not available. Likewise, Mr. Ramage asked for a lists of donors for particular programs, and Mrs. Stewart answered that she didn't have a list of donors for particular programs (fdgs. ¶ 63). Mrs. Stewart testified, however, that both lists were available and both were then and are now in the public file. According to Mrs. Stewart's account she placed the book which included her programs/problems list, closed, on the desk before Mr. Ramage, and that he concentrated on a social security announcement that was sticking out of the book, told her it was wrong, and never opened the book with the lists itself.

Mrs. Stewart testified that she had been preparing the lists since Mr. Poole told her of the rule during his 1989 inspection. Mrs. Stewart testified that she pulled one of the lists in the file out and asked Mr. Ramage what was wrong with it, and he told her that she hadn't included a date on the list which specified when it was put in the public file. Subsequent programs/problems list prepared after this inspection include a date the list was placed in the public file. Likewise, Mrs. Stewart testified that she was so flustered and confused by the episode with the programs/problems list that she was simply mistaken--the lists were and are in the public file--she was too upset to respond to Mr. Ramage accurately.

80. While Mr. Ramage doesn't remember viewing any lists at the station, or the conversation about the programs/problems list, Mrs. Stewart's testimony deserves to be credited on this point. In the first instance KOKS produced programs/problems lists and lists of donors covering the period from May 1989 when Mr. Poole inspected the station to date. While these documents could, theoretically, be fabricated later, it is extremely difficult and, therefore less likely, that Calvary would try to reconstruct specific programs, titles and times of broadcast for programs broadcast some months or years ago. Lists of donors are likewise difficult to create so long after they were supposed to be placed in the public file. The station had been inspected after Mr. Poole inspected the station in May 1989, and at that time the station had programs/problems lists and a list of donors in its public file. Mr. Ramage testified that it would be odd that the station would be

in compliance with the Commission's rules concerning the public file in 1989, but not in 1992 (fdgs. ¶ 63). A prolonged noncompliance with Commission public file rules is even less likely in this case in view of the scrutiny to which the station has consistently been subjected, both by members of the general public as well as the FCC. Mrs. Smith and Mrs. Hillis were in constant touch with the FCC and the station had been subjected to two inspections in 1989 alone. It would be a heedless licensee to ignore the real possibility of another FCC inspection to which, ultimately, the station was subjected.

81. Finally, Mrs. Stewart's version of the facts is so singular and so concrete that it is hard to believe that it is a total fabrication or a work of imagination. Moreover, the internal details of Mrs. Stewart's testimony, such as the fact that programs/problems lists prepared for quarters after Mr. Ramage's inspection include the date the list was placed in the public file, are consistent and therefore ring true.

82. Calvary would also address the ineptness issue raised by Mr. Meador's testimony that he observed Mr. Stewart running the KOKS transmitter at 115 to 125 percent of its authorized power and that, when he mentioned the matter to Mr. Stewart, Mr. Stewart lowered the transmitter power and raised it well above maximum again, so that KOKS could "reach Memphis" (fdgs. ¶ 8). The conundrum posed by Mr. Meador's testimony is that, as Mr. Stewart testified, he can perceive of no reason why Mr. Meador should bear him any animosity, nor could he explain why Mr. Meador would wish

to lie. Furthermore, Mr. Stewart's sometimes confused testimony over three days weakens the claims of his testimony to be accepted unquestioningly. Extrinsic facts and circumstances, however, support Mr. Stewart's version of events and his testimony deserves to be credited. In the first instance, Mr. Meador's testimony that he and Mr. Stewart were chatting while they were both working, Mr. Stewart in the transmitter building and Mr. Meador at the satellite--a distance in Mr. Meador's estimate of 30 yards--is not particularly credible. It is unlikely, to say the least, for someone working at the goal line to be conversing naturally with someone on the 30 yard line. Moreover, the record is replete with evidence concerning KOKS' technical difficulties with its antenna during the first years of station operation. An antenna fire two weeks after the station went on the air required the station to reduce power (fdgs. ¶ 23). A short coaxial cable kept the power down for many months. It is hardly likely, when KOKS could not run at full power because of a bullet hole in its coaxial cable, that KOKS would likely run its power up above normal. Even if Calvary were technically able to do so, why would Mr. Stewart risk further antenna fires and damaging antenna arcing when Calvary had suffered so much grief because of its antenna. Finally, and perhaps most tellingly for Mr. Stewart, with his concentration on finances, why would Mr. Stewart consciously run his power up and down when doing so shortens transmitter life and damages expensive tubes (fdgs. ¶ 8). Even if Mr. Stewart wanted to run the transmitter at excessive power there is substantial doubt that he could, and,

moreover, even if he could, he ran a substantial risk of damage to expensive tubes. Crediting Mr. Meador's version requires one to believe that Mr. Stewart is not only irrational but profligate as well, and the record is clear, particularly on the second point.

83. Even if Mrs. Stewart's testimony is not accepted, at least the station has submitted evidence that shows it is now in compliance with the Commission's public file rules, and the station's failure, in one station inspection, to comply with two public file requirements, or if Mr. Meador's testimony is credited, Calvary's conduct simply does not raise to the level of egregious, long-standing and multiple rule violations which have traditionally been held to justify the ultimate sanction of nonrenewal. Compare, for example, the conduct that the Commission found warranted nonrenewal in Catoctin Broadcasting of New York, Inc., 2 FCC Rcd 2126, 62 Rad. Reg. 2d (P&F) 1132 (Rev. Bd. 1987), which included: racial discrimination in hiring; conducted fraudulent contests; harassed persons attempting to review the public file; repeatedly, systematically and willfully violated the public file, community ascertainment and other rules; and, made flagrant misrepresentations to the FCC. See also, Trustees of the University of Pennsylvania, 69 F.C.C.2d 62, 44 Rad. Reg. 2d (P&F) 747 (1978) (persistent failure to respond to alleged technical violations, rule violations warranted nonrenewal); Wharton Communications, Inc., 44 F.C.C.2d 1394, 29 Rad. Reg. 2d (P&F) 81 (1973) (applicant which failed to report change of control, was guilty of numerous and repeated violations of technical rules, and

indulged in repeated and numerous instances of willful, fraudulent billing over a period of years warranted nonrenewal).

B. Misrepresentation Issue

84. According to the HDO the factual predicate for the issue is the Commission's question whether Calvary misrepresented a number of critical facts in connection with its various filings with the Commission, including: inaccurately and erroneously reporting various complaints concerning blanketing interference as "resolved" or "cured" both in its reports to the Commission going back to 1989 and in the reports it filed with the Commission following the 105 home visits in February 1991; never informing the Commission of the important fact that Calvary was limiting itself to the installation of one filter per household; failing to inform the Commission that it had not attempted to restore radio reception; and, failing to apprise the FCC that it did not attempt to restore reception to portable television sets because of Calvary's "unreasonable" interpretation of the rules to exclude such receivers as "mobile receivers." A review of the evidence shows, however, that KOKS, while it is guilty at times of carelessness, it has not made "... a false statement of objective fact intentionally made to deceive," Fox River Broadcasting, Inc., 88 F.C.C.2d 1132, 50 Rad. Reg. 2d (P&F) 1321, 1324 (Rev. Bd. 1982), that is the sine qua non of misrepresentation.

85. At the outset, Calvary's whole course of dealing with the Commission and its representations to the Commission have been colored by its belief, shared by both Mrs. Stewart and Mr. Stewart,

that it was under no obligation to cure blanketing interference complaints to WPSD-TV, Paducah, Kentucky (fdgs. ¶ 13). Nor can this belief be dismissed as "unreasonable." Both Mrs. Stewart and Mr. Stewart were told by their consulting engineer and their communications counsel that they need not resolve blanketing complaints to the reception of channel 6 because Poplar Bluff and the affected homes were far beyond the station's grade B contour. The record shows that in almost every written response that Calvary filed with the FCC it stated explicitly or implicitly that it had not or could not resolve complaints concerning the reception of channel 6 because Calvary was not required to do so by the rules (fdgs. ¶ 13). Despite issuing at least two letters to Calvary concerning the blanketing complaints, and one letter in which the Commission gave Calvary explicit instructions concerning how to treat "baby monitors," electric music instruments and satellites, mpy until the Hearing Designation Order in this case were Calvary's repeated and repetitive assertions contradicted by the Commission in writing (fdgs. ¶ 13). In addition, Mrs. Stewart repeatedly made the same assertions concerning Calvary's obligation to cure interference to channel 6 to Mrs. Karen Raines, the FCC employee originally handling the controversy for the Kansas City Field Office, and Mrs. Stewart was never corrected or contradicted. Mrs. Stewart made the same assertion to Mr. Poole when he was inspecting the station in 1989, and he did not correct or contradict her (fdgs. ¶ 13). Calvary's interpretation of its obligations with respect to channel 6 was even confirmed, paradoxically, by a

broadside prepared by Calvary's chief adversaries, Mrs. Smith and Mrs. Hillis, which noted that channel 6 was not "an authorized station for this area," and, finally, by the management of channel 6 which stated that it had no legal rights in the controversy because "of the specified geographical limits" (fdgs. ¶ 13).

86. Calvary, specifically Mrs. Stewart, in its earliest reports filed with the FCC in 1989 reported a number of complaints as "resolved" or "cured" when the people seemed happy with the reception of channels other than channel 6 (fdgs. ¶ 20). These people included: Leatha Piper; Mary Wynn; Clara/Clyde Freeman; Mrs. William T. Gray; Sandra Durbin; and, Elaine Libla. Mrs. Stewart testified that each of the persons in question noticed an improvement in the reception of channels other than channel 6 following the installation of a filter (fdgs. ¶ 20). Given the amount of time that has elapsed and the continuing controversy, the record does not support a conclusion that Mrs. Stewart was making the facts upon which these representations were based out of whole cloth. One of the complainants, Mary Wynn, testified that her reception was improved after the installation of a filter, even if it deteriorated after Mrs. Stewart left (fdgs. ¶ 43). Mrs. Gray testified that the filter "didn't do much," but also testified that she switched the filter on to a new set that she bought. Mrs. Freeman testified that the filter installed was ineffective, but she also testified that she was not there when Mrs. Stewart came to the house, so she has no way of knowing what Mrs. Stewart observed. Mrs. Durbin testified that after the installation of the filter by

Mrs. Stewart that the reception of channels 12 and 15 "improved greatly," and told her so, but there was not much affect on channels 6 and 8 (fdgs. ¶ 55). All of these complainants subsequently signed new complaints after Calvary reported their complaints "resolved" (fdgs. ¶ 20).

87. Calvary, however, in every instance filed information subsequently which informed the Commission that its earlier representations were erroneous. For example, with respect to the Freemans, Calvary informed the Commission that a filter had been installed on the Freemans' set, but that it had been removed before the Calvary representative left (fdgs. ¶ 21). With respect to Mrs. Gray, the Commission was informed that she complained of interference to channels 6 and 8, and that the installation of a filter improved reception of channel 8. With respect to Mrs. Libla (nee "Libes" or "Liber"), Calvary reported that the installation of a filter improved reception on channel 6, but didn't bring in the color, and the filter didn't improve reception at all on channel 6 on the other set. Mrs. Durbin, who was earlier reported as having her complaint resolved, was reported to be experiencing blanketing interference on channels 6 and 8 which was "improved" by the installation of a filter. Calvary reported that the installation of a filter for Mrs. Wynn improved reception on all channels except channel 6, and that she was "dissatisfied with the result." Mrs. Piper is noted as complaining of reception to channels 8, 12 and 15, and that two filters were installed. No comment was made about the filter's effectiveness, and a comment was made that Mrs. Piper

had installed a booster, which, at that time, at least arguably, would make her exempt under section 73.318.⁵/ In each and every instance, then, Calvary's original representation had been corrected or modified to make it clear that it was no longer accurate.

88. Mrs. Stewart's testimony that she made no knowing misrepresentation deserves to be credited on this point. The differences in her testimony, compared with some of the complainants, may be most accurately attributed to honest differences in opinion concerning a matter as inherently subjective as "improvements" in TV reception. See, WIOO, Inc., 95 F.C.C.2d 1132, 54 Rad. Reg. 2d (P&F) 1291 (1983) (discrepancies in accounts likely to be honest differences of opinion). Mrs. Stewart also was in the process of responding to a veritable mountain of written complaints, over 1,200 in all (fdgs. ¶ 11), all of which required her to make at least one and often many more telephone calls, and which required her to visit a large number of homes, often many times. It would not necessarily be conscious misrepresentation for Mrs. Stewart to remember less than absolutely everything that occurred at each home, or to fail to transmit to counsel perfectly

⁵/Section 73.318(b) exempts television sets with boosters from the operation of the rule. However, in one of the many instances in this case where the Commission has had to make a decision on an issue of first impression, the Commission ruled in the Hearing Designation Order that the fact that someone subsequently installs a booster to improve reception does not relieve the licensee from its obligation to improve reception. HDO, fn. 17.

accurately the details of what occurred in the literally hundreds of homes that she visited.

89. Finally, it is highly unlikely that Mrs. Stewart would consciously misrepresent the results of her home visits in light of the fact that Mrs. Stewart, more than anyone, knew that Calvary's responses were likely to be subjected to the most searching scrutiny. When Calvary's September 1989 response was filed, the FCC had already inspected the station once and initiated an investigation of some of the blanketing complaints (fdgs. ¶ 12). Predictably, another inspection was to follow in a few months. During the time frame that the responses were filed Mrs. Smith and Mrs. Hillis were still canvassing Butler County (fdgs. ¶ 11), and Mrs. Stewart had heard of complaints being distributed at local supermarkets. Mrs. Stewart knew that Mrs. Smith and Mrs. Hillis were calling the FCC constantly about the matter (fdgs. ¶ 14). A lawsuit had been filed in local court, asking for an unspecified amount of money damages, and that litigation had not yet been conclusively resolved (fdgs. ¶ 25). Mrs. Stewart had already received duplicate complaints. In short, given the totality of circumstances it would be a licensee who is either entirely heedless or awesomely stupid to consciously misrepresent facts to the FCC in the situation that Calvary then found itself.

90. More troubling is the fact that Mrs. Stewart reported Mrs. Durbin's and Mrs. Piper's complaints as resolved, but received from the FCC and reviewed complaints which both ladies subsequently filed with the FCC, and neither offered any further assistance or

unambiguously reported to the Commission that the complaints were still active (fdgs. ¶ 30). The explanation for these lapses is, in both instances, both simple and humble. Mrs. Stewart's attitude concerning Mrs. Piper's complaint undoubtedly changed when she learned that Mrs. Piper had acquired a booster, but her primary explanation is simple mistake--"[i]t had been a hard year and some of these (complaints) I just missed picking up" (fdgs. ¶ 20). Given the number of complaints with which Mrs. Stewart was required to deal, a mistake in dealing with a few is certainly understandable. Moreover, Mrs. Stewart's motive for misrepresenting facts with these two complaints, and not, for example, misrepresenting the situation with Mrs. Wynn, who was also reported as resolved, but, in Calvary's September report, is noted as "disatisfied," or Mrs. Libla, whose complaint was also reported as "resolved," but who was reported to have continuing problems with the reception of channel 6. Also, it is somewhat hard to conceive of a less likely scenario for successfully concealing something from the Commission--denying the existence of a complaint a copy of which is received from the FCC.

91. Some of this same reasoning supports the conclusion that Calvary is equally unlikely to have consciously and intentionally misrepresented the results of its home visits on the reception of the complainants in its reports filed with the FCC in February of 1991. In the first instance, however Calvary may have characterized the results of its visits, it submitted field reports prepared simultaneously with the visit or within a few days after

visit, essentially giving the Commission the raw material on which it based its reports. As the Commission itself noted, in most instances (some 90 out of 115), the complainant himself or herself signed the report submitted to the FCC. These complainants, then, were shown and presumably read what was submitted to the FCC, and did not disagree with the descriptions of their TV reception contained there. Likewise, in those instances where the complainant did not sign the report, that fact was noted and the reason for the refusal to sign was noted, including a report, in some instances, of the complainants' differences with Calvary, particularly with respect to Mrs. Smith and the Hillis' and the Garrisons (fdgs. ¶ 54).

92. Calvary's representations must also be interpreted in light of what Calvary believed was its mission, and from the facts that it knew at that time. Calvary believed it was charged with responsibility for curing interference caused by blanketing interference. The person whom Calvary hired to assist it in that task, Mr. Charlie Lampe, was certainly qualified to assist Calvary on its visits and had been in the radio and TV repair business long enough for his opinions to be given great weight, particularly by Calvary. Mr. Lampe had been in the TV business all his life, and had been exposed to the theory of FM blanketing interference literally from high school (fdgs. ¶ 33). He had been dealing with repair manuals that described and pictured blanketing interference for years. Mr. Lampe had even been involved in dealing with multiple blanketing complaints to television reception caused by

another local television station, KKLR (fdgs. ¶ 35). Based on years of experience in the television repair business Mr. Lampe testified that FM blanketing interference appeared on a TV set in two ways--either the channel went completely blank, or the set showed a distinctive pattern of herringbone lines (fdgs. ¶ 35). Mr. Ramage, who, unlike Mr. Lampe, had never seen FM blanketing interference on a television set before he came to Poplar Bluff (fdgs. ¶ 72), described blanketing interference as "overload interference," which he had seen with respect to two-way radio interference and land-mobile interference, in exactly the same way--as manifesting itself either as a herringbone pattern or a totally blanked out screen on the set (fdgs. ¶ 72). Both Mr. Ramage and Mr. Lampe testified that blanketing interference was distinctive, that you would have no trouble distinguishing it from the "snow" caused by a weak signal or from co-channel interference. Mr. Lampe testified that he detected no blanketing interference in the television sets he visited with the Stewarts in 1991, specifically in the homes of the Smiths, Hillis', Ellis', Garrisons, and Crutchfields (fdgs. ¶¶ 39, 41, 50, 54, 56). Nor did Mr. Lampe or anyone else hear KOKS audio in television sets in the homes that he visited, a clear indicator that no blanketing interference was present. Mr. Ramage likewise testified that he did not observe the distinctive herringbone pattern of FM blanketing interference in any of the sets whose reception he observed during his field visit, and he heard KOKS audio only on sets in the Hillis and Smith homes (fdgs. ¶ 73). In addition, Mr. Lampe had been told the filters

that Calvary was installing would work, in that the filters were designed to suppress the frequency on which KOKS operates by 60 dB, which the FCC defined as very near perfect (fdgs. ¶ 36). In fact, in some instances, the filters clearly did exactly what they were designed to do. The Stewarts, and Mr. Lampe, therefore had factual and objective evidence before their eyes that the filters which Calvary installed did, as Calvary reported to the FCC, eliminate FM blanketing interference.

93. Several times the question was posed to Mrs. Stewart and Mr. Lampe why the station never shut itself off while they were making home visits so Calvary could test the reception with KOKS on and off the air. Mr. Lampe testified that never occurred to him, and Mrs. Stewart testified that she did not consider it because there was no way of proving to the complainants that the radio station was off the air, and that would be a problem. The record shows that Mrs. Stewart was not afflicted with paranoia in not believing that complainants would trust that the station was off the air. Mr. Ramage noted that when Mrs. Smith's TV reception didn't improve as much as she would have liked it, she was sure the station didn't go off the air even when Mr. Ramage showed her a spectrum analyzer showing that the station was off the air. In the final analysis, however, the reason it never occurred to KOKS to go off the air was that while it was a good practice to shut the station down during a test involving 14 homes, as was the case with Mr. Ramage, that same empiricism would be wildly impractical when applied to the number of home visits at wildly varying times that

Calvary was obliged to make. The disruption to the KOKS staff, the station's paid programmers, its revenues and contributions, not to mention its audience which would be caused by shutting the station off and on again for each of the well over 100 residences visited by Calvary, all at irregular intervals and unpredictable times, can only be imagined.

94. The record is also replete with references to the fact that TV reception in Poplar Bluff is poor because of the great distances of the community from the stations the residents wish to receive (67 and 68 miles from channels 8 and 12, and 86 miles from channel 6) (fdgs. ¶ 34), and because two of the stations which the residents wished to receive, channels 6 and 12, are located in almost exactly the wrong direction from the other channel, channel 8 (fdgs. ¶ 34). Both channels 6 and 8 are also subject to co-channel interference from other stations (fdgs. ¶ 34). In this environment the fact that a picture on a complainant's set was receiving snow, or faded, or seemed to be subject to ghosting would not indicate to an objective observer that blanketing interference was still present. Poor picture reception was the norm, not the exception, even before KOKS came on the air, and the lack of FM blanketing interference's distinctive herringbone pattern reinforces the perception that no blanketing interference is present. Many of the complainants themselves testified that they did not receive one or more of the desired channels particularly well, even before KOKS came on the air. Neither Mr. Lampe nor Mrs. Stewart ever asked a complainant how their reception was when KOKS

went on the air for the simple reason that there is no way to verify what reception was like before KOKS went on the air.

95. Calvary was obligated to cure complaints caused by blanketing interference. The professional it retained to assist did not see any blanketing interference in the sets in the homes he viewed. The fact that certain receivers were not receiving particularly clear reception was the norm in an area of weak TV signals, not the exception. An independent professional, Mr. Lampe, signed most of the reports which were submitted to the FCC as well as one or both of the Stewarts. Calvary's professional help, Mr. Lampe, told them that the filters they were installing were almost perfect in suppressing the KOKS signal. There were, accordingly, solid, objective and good faith reasons for Calvary to believe in the accuracy of the representations made to the FCC in its February 1991 reports.

96. It is likewise highly unlikely that Calvary would knowingly engage in misrepresentations in its response to the FCC. As noted above, it provided the notes on which it based its representations to the Commission. Those field reports were signed, in most instances, by both the Stewarts and by Mr. Lampe, and all signatures were notarized--i.e., submitted under penalty of perjury. Calvary showed its reports to everyone whose home it visited, and in 87 percent of those instances the complainant signed the report itself. Moreover, not to belabor the point, but Calvary was absolutely certain that its representations to the FCC would be given the closest and least sympathetic study by Mrs.

Smith and Mrs. Hillis. All of these factors strongly argue against Calvary possessing the necessary deceptive intent necessary for it to be found guilty of willful misrepresentation. See, KOED, Inc., 3 FCC Rcd. 2601, 64 Rad. Reg. 2d (P&F) 1344, 1352 (Rev. Bd. 1988).

97. Calvary is also not guilty of misrepresentation for failing to apprise the Commission of its policy to provide only one filter to one TV, or to exclude portable television sets from those to which reception must be restored, as noted in the HDO, for the simple reason that those have never been policies of Calvary--at least as generally applied or understood by the Calvary staff member, Mrs. Nina Stewart, who was almost solely responsible for responding to interference complaints. Mr. Stewart, as is his wont, told Charlie Lampe to only install one filter per household and not to fix portable sets, defined as "anything with rabbit ears and a handle" (fdgs. ¶ 37). Mr. Stewart even told Mr. Ramage that was the station's policy (fdgs. ¶ 68). Mrs. Stewart didn't know of any such policy, however, nor had she ever heard Mr. Stewart state such a policy (fdgs. ¶ 37). Moreover, and perhaps more significantly, Calvary's actions belied Mr. Stewart's forays into policy-making. In roughly 10 percent of the homes which Calvary visited in February 1991 more than one filter was installed, including the Adams residence, where no less than four filters were installed (fdgs. ¶ 31). In certain homes, like Mrs. Christian or Mr. Beckham at Whispering Oaks Boarding Home, the complainant was not given a filter for other reasons. In Mrs. Christian's case, she stated that she was going to rearrange her television sets so

they would all run off her booster, in which case one filter was ample. In Mr. Beckham's case he was not given another filter because he stated he was going to replace the set and Calvary wanted to install the filter itself and review the resulting reception. Mrs. Stewart installed more than one filter in any number of homes which she visited in 1989, such as the Freemans or the Whispering Oaks Boarding Home, where she put three filters on three different sets (fdgs. ¶ 60). Calvary also installed filters and tried to restore reception to portable TV sets, whatever Mr. Stewart opined. Mr. Lampe and Mrs. Stewart both testified that they installed filters on portable sets (fdgs. ¶¶ 18, 37, 60).

98. Finally, the record shows not that Calvary did not refuse to restore reception to complainant's radios, but that few complainants actually requested Calvary to restore reception when a Calvary representative phoned or visited the complainants home, or were, in fact, greatly interested in radio reception. Mr. Lampe testified that in 105 home visits no one mentioned problems with their radios in his presence (fdgs. ¶ 16). Mr. Moffit, in his report, mentioned that radio reception did not appear to be a major concern (fdgs. ¶ 30). Mrs. Stewart testified that only four people ever raised the issue of radio reception with her during her home visits. The Hillis' complained of reception to their stereo in March of 1989, but nothing was done because Mr. Hillis didn't provide a list. Mrs. Wynn complained of radio reception problems, and Mrs. Stewart installed a filter on her radio, although Mrs. Stewart's and Mrs. Wynn's testimony differs on how effective the

filter was. Mrs. Gray complained of problems with her radio, but her problems were primarily with a loud buzz on her AM band. Mrs. Gray testified that she turned the radio on in Mrs. Stewart's presence to the AM band, and doesn't believe, now, that she mentioned any problems with the FM band (fdgs. ¶ 16).

99. There are only two instances in which Mrs. Stewart's testimony is contradicted, and that, predictably, is by Mrs. Smith and Mrs. Hillis. Mrs. Stewart flatly denies that she, or Calvary, ever rejected Mrs. Smith's or Mrs. Hillis' request to fix their radio (fdgs. ¶ 16). In this instance Mrs. Stewart's version of events should be credited. In one instance, with respect to Mrs. Hillis, Mrs. Stewart's testimony is corroborated by Mr. Lampe, who did not remember hearing any mention of a radio while he was at the Hillis' residence (fdgs. ¶ 40). Mr. Lampe's testimony that he could not remember anyone mentioning problems with their radio in his 105 home visits. Finally, Mrs. Smith and Mrs. Hillis are also hardly "disinterested" or "public" witnesses. Both clearly have a stake--a personal stake--in the outcome. Mrs. Smith testified to a source of animus toward the station that has nothing to do with blanketing interference--she initially reacted to the radio station before it even came on the air because she believed the tower would devalue her property (fdgs. ¶ 7). Both Mrs. Smith and Mrs. Hillis were plaintiffs in a lawsuit seeking damages from the licensee, and both invested enough time to personally canvass the entire county seeking to generate petition complaints against the station (fdgs. ¶ 12). Both made constant telephone calls to the FCC, both

the Kansas City Field Office and the Mass Media Bureau in Washington, D.C. (fdgs. ¶ 38). Both wrote letters to various congressmen. Both vigorously participated in the pleadings filed in this application proceeding. Both took the time to call those visited by the FCC both before and after FCC inspections, and both apparently provided complainants with questions to ask the FCC. Both apparently were paranoid enough about the whole process to ask if the Stewarts brought a tape recorder with them when they visited the Smith house, and ask them to leave it outside (fdgs. ¶ 39). Both were apparently involved in orchestrating the response to Calvary's February 1991 filings. They are both, accordingly, certainly interested parties who have a proven animus toward Calvary and a motive, especially in Mrs. Smith's instance, unrelated to putative television service, to wish that KOKS not to be renewed. The potential for bias in their testimony should be weighed accordingly.

100. Mrs. Stewart's testimony also deserves to be believed, at least in part, because Mrs. Smith's and Mrs. Hillis' testimony is somewhat unbelievable. It is hardly credible for Mrs. Stewart, in the home of her chief antagonists, when she knew that the restoration of radio reception was one of Calvary's obligations (fdgs. ¶ 16), to baldly tell both that Calvary wasn't going to do what she knew it was required to do. This is all the more unbelievable when she knew that anything she did in connection with either Mrs. Smith or Mrs. Hillis that was not strictly compliant with Commission rules would be speedily reported to the FCC. Mrs.

Stewart, if the testimony of Mrs. Smith and Mrs. Hillis is taken at face value, apparently also was careful enough to make both statements outside of Mr. Lampe's hearing.

101. The Commission has held, in any number of cases, that "... the administrative penalty of total disqualification will occur only if a willful intent to deceive is discerned." Fox River Broadcasting, Inc., 88 F.C.C.2d 1132, 50 Rad. Reg. 2d (P&F) 1321, 1325 (Rev. Bd. 1982). Calvary, on this record, can not be held to have consciously and purposefully deceived the Commission, and certainly does not warrant the ultimate sanction.

C. The Blanketing Issue

102. At the outset Calvary must concede that in at least two instances, and perhaps others, it has unquestionably not cured complaints concerning blanketing, specifically in the cases of Mrs. Durbin and Mrs. Freeman, and that Calvary will do so within the very near future.^{6/} As Mrs. Stewart testified, some complaints were "just missed picking up" and should be addressed. Calvary also notes that Mr. Stewart's statements concerning Calvary's "policy" that Calvary's assistance be limited to one set per household, or one filter per set, or that any TV set "with a handle or rabbit ears" is excluded from Calvary's obligations, are clearly erroneous both on the law and the facts. In fact, the record shows

^{6/}In instances where it is clear that Calvary has not fulfilled its obligations under section 73.318 which have become apparent during the hearing, it will move with all dispatch, given the financial and personal demands placed on Calvary, to attempt to resolve the complaint, assuming that the complainant still wishes help and will cooperate.